

Alabama Credit Union Administration

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Section 1. Organization of a State Chartered Credit Union**Organization**

Section 5-17-2 of the Alabama Code states “Any seven residents of the State of Alabama may apply to the Administrator of the Alabama Credit Union Administration for permission to organize a credit union.”

In order to demonstrate a viable future for a proposed credit union, there should be a field of membership of not less than 500 potential members. These persons must show an interest and ability to support the proposed credit union including sponsor furnished quarters, data processing, volunteer management, etc. Sponsor subsidizes and voluntary management must continue until the credit union is able to sustain its own operations.

Section 2. Loans**Part I. Loan Policies**

Both federally insured and privately insured state chartered credit unions in Alabama, other than the corporate credit union that is subject to other specific regulations, are required to have written loan policies that specify, at a minimum, the following for each type loan offered:

1. Collateral requirements including protection of security interests, filing of UCC's; titles; insurance for collateral with credit union named as loss payee or mortgagee;
2. Appraisals standards that meet the definition of a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately-described property as of a specific date(s), supported by the presentation and analysis of relevant market information. Standards to include, but not limited to,
 - (a) Every state chartered credit union is required to obtain a written appraisal for all first mortgage loans in excess of \$150,000. Provided, that the credit union has made a physical investigation of the property, accompanied by picture(s) of the same, a tax assessment statement may be used in lieu of an appraisal. This does not apply to business loans;
 - (b) Where appraisals are required, and the person, partnership or corporation is provided a fee or other valuable consideration, it is mandatory that anyone who appraises property in the state of Alabama be licensed by the Alabama Real Estate Appraisers Board to comply with the Code of Alabama, 1975, Section 34-27A-3.
 - (c) An appraisal shall be performed by a State certified or licensed appraiser and is specifically required for all real-estate related financial transactions where the transaction value is \$250,000 or greater. Real estate related financial transaction means any transaction involving the sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof; or, the refinancing of real property or interests in real property; or the use of real property or interests in property as security for a loan or investment, including mortgage-backed securities; Otherwise;
 - (d) A staff appraiser may be used for transactions less than \$250,000 but must be independent of the lending, investment and collection functions and not involved in the transaction and have no direct or indirect interest, financial or otherwise, in the property. Such appraisal shall be supported by a written estimate of market value and the staff appraiser must be experienced and qualified to perform such estimates of value for the type and amount of credit being considered;
 - (e) All real estate transactions having a transaction value of \$1,000,000 or more shall require an appraisal prepared by a state-certified appraiser. Transaction value means the amount of the loan or market value of the real property interest involved for sales, leases, purchases and investments in or exchanges of real property;

- (f) All non-residential transactions having a transaction value of more than \$250,000, other than those involving appraisals of 1-to-4 family residential properties shall require an appraisal prepared by a state-certified appraiser;
 - (g) The appraisal shall, at a minimum, conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice (USPAP);
 - (h) Appraisals shall be written and contain sufficient information and analysis to support the credit union's decision to engage in the transaction;
 - (i) When applicable, the appraisal shall analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, tract developments for unsold units;
 - (j) Appraisals should be based upon market value meaning the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus; and,
 - (k) ACUA reserves the right to require an appraisal under this part whenever the agency believes it is necessary to address safety and soundness concerns.
3. Loan to value parameters; credit reports; adequate determination of the financial capacity of the borrower(s) and co-borrower(s) for repayment of the loan;
 4. Maximum loan amount; purpose; complete credit application;
 5. Maximum maturity limits for each type of loan, whether secured or unsecured;
 6. Interest rate or basis; terms by type; indices for variable rate products; controls to monitor rate changes; review of file maintenance reports; due date changes; extension agreements;
 7. Risk-based pricing measures, if applicable; risk-based lending measures, if applicable;
 8. Indirect Lending underwriting standards, parameters and monitoring measures;
 9. Sub prime lending underwriting standards, parameters and monitoring measures;
 10. Employee and official loan underwriting standards and parameters, and monitoring measures;
 11. Credit card underwriting standards and parameters, and monitoring measures;
 12. Overdraft privilege program underwriting standards, monitoring measures;
 13. Home Equity Lines of Credit; requirements for use of current tax assessments in lieu of appraisal; and,
 14. Collection policies, practices, procedures and delinquency control measures.

Furthermore, every credit union's loan policy or other Board approved policy must address self-dealing, non preferential treatment and conflicts of interests to include a statement that no official or employee of a state chartered credit union, or immediate family member of an official or employee, may receive, directly or indirectly, any commission, fee, or other compensation in connection with any loan made by the credit union. Compensation includes non monetary items, except those of nominal value. Immediate family member means a spouse or other family member living in the same household. Official means any member of the Board of Directors, Supervisory Committee or Credit Committee.

Part II. Allowance for Loan and Lease Losses; methodology; full and fair disclosure

There should be a board approved written policy that is 3rd party validated that addresses funding requirements for the Allowance for Loan and Lease Losses account, including a written charge off policy; management's written methodology to ensure that permanently and measurably impaired loans or pools as well as other homogenous loans with probable loss characteristics are identified and properly reserved for to accurately reflect full and fair disclosure of the credit union's financial condition and compliance with generally accepted accounting principles (GAAP). Adjustments to the ALLL account will be recorded in the Provision for Loan and Lease Losses expense account. Adjustments to the ALLL will be made prior to the distribution or posting of any dividend to the accounts of members.

Part III. Limits of Indebtedness.

Secured and unsecured limits must also be established in policy for the total indebtedness to be allowed one member or a group of closely related members. (Subject to the maximums stated below) These limits may be expressed as a dollar amount, percentage of assets or percentage of net worth.

Other limits which must be addressed in the credit union policies include maximum amounts (as a percentage of assets) to be allowed in long-term fixed rate real estate loans or construction loans; maximum unsecured loans to a member; maximum amounts for both unsecured and secured member business loans; and any other limits desired by the board of directors.

(a) No credit union shall make a loan to any one member which, when combined with all other loans to such member, would cause total loans to that member to exceed:

1. Ten percent of net worth of the credit union, if such loans are not secured, or
2. Twenty percent of net worth of the credit union, if loans in excess of 10 percent of net worth are fully secured.
3. Participation loan limits will be judged by the same standards.

No loans which would exceed the limitation set forth in (a) (1) shall be made unless duly authorized and approved in accordance with the credit union's bylaws by either the elected Credit Committee, appointed loan committee or board of directors, with such authorization and approval being recorded in minutes of the meeting at which the authority was given.

(b) As used in this section, the term "net worth" shall include regular reserves, other reserves, undivided earnings; net income/loss for the period and such reserves as may from time to time be permitted to be included by the Administrator.

Part IV. Participation Loans

A state chartered credit union must provide prior notification to the Administrator of the Alabama Credit Union Administration when any credit union's Board of Directors approves a new (initial) participation lending program between credit unions and other financial organizations.

For purposes of this section, "participation loan" means a loan where one or more eligible organizations participate pursuant to a written agreement with the original lender. "Eligible organization" means a credit union, members of a credit union, financial organization or credit union organization. Originating lender means the participant with which the member contracts. Credit union means any federal or state chartered credit union. Credit union organization means a credit union service organization that primarily serves credit unions, its membership or the membership of credit unions contracting with the credit union service organization. This term does not include trade associations unless eligible through membership under the bylaws of the credit union. Financial organization means any federally insured or privately insured credit union or other federally insured financial institution.

General

A state chartered credit union may participate in making loans with eligible organizations as defined in this section only within the limitations of the board of directors' written participation loan policies, provided,

(1) No state chartered credit union shall obtain an interest in a participation loan if the sum of that interest and other indebtedness owing to the state chartered credit union exceeds ten (10) percent of the credit union's unimpaired capital and surplus.

Unimpaired capital and surplus shall be defined as shares, deposits and undivided earnings.

(2) A written master participation agreement shall be properly executed, acted upon by the credit committee or appointed loan committee and retained in the credit union's office. The master agreement shall include the provisions for identifying, either through a document that is incorporated by reference into the master agreement, or directly in the master agreement, the participation loan or loans prior to their sale.

(3) A state chartered credit union may sell to or purchase from any participant the servicing of any loan in which it owns a participation interest.

Requirements of a state chartered credit union as originating lender

(1) Any state chartered credit union that is the originating lender shall only make loans to its own members; must retain an interest (dollar amount) of the face amount of each loan when the participation agreement calls for either partial or full recourse (any dollar amount to be retained for loans without recourse is at the discretion of the Board); must retain the original or copies of the loan documents; and, must require the credit committee, its designee (ie..loan officer) or appointed loan committee to use the same underwriting standards for participation loans used for loans that are not being sold in a participation agreement unless there is a participation agreement in place prior to the disbursement of the loan. When a participation agreement is in place prior to disbursement, either the originating credit union's loan policies or the participation agreement shall address any variance from non-participation loan underwriting standards.

Requirements of a participant state chartered credit union that is not an originating lender

(1) A participating state chartered credit union that is not the originating lender shall participate only in loans it is empowered to grant in accordance with its Board approved loan policy and must have a participation loan policy in place which sets forth the loan underwriting standards prior to entering into a participation agreement; must participate in participation loans only if made to its own members or members of another participating credit union; must retain the original or a copy of the written participation agreement and a schedule of the loans covered by the agreement; and, must obtain the approval of either the elected credit committee or appointed loan committee prior to disbursement of proceeds to the originating lender.

Part V. Business Loans

All federally insured state chartered credit unions are regulated in accordance with NCUA's Member Business Lending Regulations but are no more restrictive. Each credit union must adopt a very specific and detailed policy which conforms to the regulation and a copy of this Board approved policy must be forwarded to the Administrator prior to a credit union initially engaging in member business lending. For conformity, ACUA will examine privately-insured state chartered credit unions under the same standards but no more restrictive.

Part VI. Borrowing Authority

A state chartered credit union may not borrow, from any source, the lesser of the following: an amount in excess of 50% of its paid-in and unimpaired capital and surplus (defined as shares, deposits and undivided earnings, plus net income or minus net loss for the period) or 50% of assets. Credit union management may apply for a waiver to the Administrator of the ACUA but in no case will borrowing exceed the limit established Section 5-17-4 (8) of the Code of Alabama, 1975.

Section 3. Investments

Note: The state chartered corporate credit union will comply with NCUA's Rules & Regulations, Part 704, specifically Part 704.5 as it pertains to investments.

The Board of Directors of each Alabama state chartered credit union shall establish written investment policies consistent with the applicable provisions of the Code of Alabama, and other applicable laws and regulations, including sound business practices. Policies should be reviewed and modified as required, but not less frequently than annually. Board minutes should reflect (document) a review of the policy and any amendments to the policy.

At a minimum, the written policy shall address the following:

- (a) Purposes and objectives of the credit union's investment activities, including a statement whether securities purchased are categorized as (1) hold to maturity, (2) available for sale, or (3) trading securities;
- (b) Persons or committees to whom investment authority has been delegated and the extent of their authority;
- (c) Limits on the amount of funds that may be committed to any particular investments or securities transaction, including the investments characteristics such as issuer, maturity, index, cap, floor, coupon rate, coupon formula, call provision, average life and interest rate risk;
- (d) Maturity limits; and, how management will manage interest rate risks through its asset-liability management policy, practices and procedures;
- (e) Liquidity risk (as applicable); how management will manage liquidity risks; borrowings and lines of credit available;
- (f) How management will manage concentration risk that can be a result of dealing with one issuer or holding similar securities with similar maturities or indices; and how management will manage credit risk, specifically setting limits by institutions or issuers;
- (g) Listing of securities dealers/brokerage firms approved for use by the Board of Directors together with any limitations that the board has established with respect to the amount of funds that may be placed or invested with any of the approved broker/dealers (as applicable);
- (h) Safekeeping of securities, including a list of safekeeping facilities approved by the credit union's Board of Directors. A credit union must maintain a record or documentation to support investment transactions. For example, a broker confirmation for each investment purchased and sold;
- (i) The policy should address internal controls; maintenance of investment transaction documentation (broker dealer confirmations; bid, ask, sell price quotes, etc); segregation of duties, the risk taking or purchasing and selling function should be separate from risk monitoring of the portfolio.
- (k) Credit unions with assets in excess of \$10,000,000 must comply with generally accepted accounting principles for reporting requirements.

State chartered federally-insured credit unions (excluding a state chartered corporate credit union) are required to establish an additional special reserve for investments for non-conforming investments in an amount equal to the net excess of book value over current market value of the investment(s). Such a reserve is only required for impermissible investments such as variable rate instruments with indices tied to foreign currencies or foreign interest rates; or municipal securities whose credit rating falls below one of the top four rating criteria established by a nationally-recognized statistical rating organization; or purchasing or selling financial derivatives such as futures, options, interest rate swaps or forward rate swaps; or zero coupon investments with a maturity date in excess of 10 years; or a commercial mortgage related security or stripped mortgage backed securities; or purchase residual interests in collateralized mortgage obligations, real estate mortgage investment conduits or small business related securities.

Section 4. Limits on Loans and Investments in Credit Union Service Organizations

This section shall establish when a state chartered credit union in Alabama can invest in and make loans to Credit Union Service Organizations (CUSO's). CUSO's are subject to review by the ACUA, normally as part of the examination of the credit union. Access to the CUSO's financial statements, books and records of the CUSO and the ability to review the CUSO internal controls, as deemed necessary by ACUA in carrying out its responsibilities under the Code of Alabama must be provided at the request of the Administrator and/or state examiners.

General Requirements

1. State chartered credit unions must obtain written agreements from a CUSO, prior to investing in or loaning to the CUSO, that the CUSO will:
 - (a) Account for all its transactions in accordance with Generally Accepted Accounting Principles (GAAP); Total shares and undivided earnings are to be measured consistent with GAAP;
 - (b) Prepare quarterly financial statements and obtain an annual opinion audit by a licensed Certified Public Accountant on its financial statements in accordance with "generally accepted auditing standards" (GAAS);
 - (c) State chartered credit unions must obtain a legal opinion prior to investing in or loaning to a CUSO, as to whether the CUSO is established in a manner that will limit potential exposure of the credit union to no more than the loss of funds invested in or lent to, the CUSO; and,
 - (d) A state chartered credit union may only invest in or loan to a CUSO whose activities and services are routine daily operations of credit unions.

A state chartered credit union proposing to invest or lend more than 2 percent of shares, deposits and undivided earnings must also be Well Capitalized (a minimum Net Worth ratio of 7% of assets). Net Worth is defined as regular reserves, other reserves, undivided earnings and net income/loss).

The total amount of funds either invested in or loaned to a credit union service organization shall not exceed 4% of unimpaired capital defined as shares, deposits and undivided earnings as of its most recent calendar year-end financial report. A credit union must first receive written approval from the Administrator when either the investment in, loan to or combination of both exceeds 2% of unimpaired capital (shares, deposits and undivided earnings) as of the most recent calendar year end financial report.

The Administrator of the Alabama Credit Union Administration may limit a state chartered credit union's CUSO activities or services or refuse to permit any CUSO activities or services when either supervisory, legal or safety and soundness issues exist.

At no time can the maximum 4% limit be exceeded and when a credit union falls below "Well Capitalized" (a 7% Net Worth ratio), the Administrator reserves the right to establish reserving requirements in conformance with generally accepted accounting principles.

A state chartered credit union can invest in or lend to a CUSO only if the CUSO is structured as a corporation, limited liability company, limited partnership or other limited liability entity.

A state chartered credit union can invest in, loan to or contract with only those CUSO's that are sufficiently bonded or insured for their specific operations and engaged in the preapproved activities and services related to the routine daily operations of credit unions. The specific activities listed within each preapproved category

are provided in this section as illustrations of activities permissible under the particular category, not as an exclusive or exhaustive list. The preapproved activities are as follows:

- (a) Checking and currency services:
 - (1) Check cashing;
 - (2) Coin and currency services; and
 - (3) Money order, savings bonds, travelers checks, and purchase and sale of U.S. Mint commemorative coins and services;

- (b) Clerical, professional and management services:
 - (1) Accounting services;
 - (2) Courier services;
 - (3) Credit analysis;
 - (4) Facsimile transmissions and copying services;
 - (5) Internal audits for credit unions;
 - (6) Locator services;
 - (7) Management and personnel training and support;
 - (8) Marketing services;
 - (9) Research services; and
 - (10) Supervisory committee audits;

- (c) Business loan origination;

- (d) Consumer mortgage loan origination;

- (e) Electronic transaction services:
 - (1) Automated teller machine (ATM) services;
 - (2) Credit card and debit card services;
 - (3) Data processing;
 - (4) Electronic fund transfer (EFT) services;
 - (5) Electronic income tax filing;
 - (6) Payment item processing;
 - (7) Wire transfer services; and
 - (8) Cyber financial services;

- (f) Financial counseling services:
 - (1) Developing and administering Individual Retirement Accounts (IRA), Keogh, deferred compensation, and other personnel benefit plans;
 - (2) Estate planning;
 - (3) Financial planning and counseling;
 - (4) Income tax preparation;
 - (5) Investment counseling; and
 - (6) Retirement counseling;

- (g) Fixed asset services:
 - (1) Management, development, sale or lease of fixed assets; and
 - (2) Sale, lease or servicing of computer hardware or software;

- (h) Insurance brokerage or agency:
 - (1) Agency for sale of insurance;
 - (2) Provision of vehicle warranty programs; and
 - (3) Provision of group purchasing programs;

- (i) Leasing:
 - (1) Personal property; and

- (2) Real estate leasing of excess CUSO property; and
- (j) Loan support services:
 - (1) Debt collection services;
 - (2) Loan processing, servicing and sales; and
 - (3) Sale of repossessed collateral;
- (k) Record retention, security and disaster recovery services:
 - (1) Alarm-monitoring and other security services;
 - (2) Disaster recovery services;
 - (3) Microfilm, microfiche, optical and electronic imaging, CD-ROM data storage and retrieval services;
 - (4) Provision of forms and supplies; and
 - (5) Record retention and storage;
- (l) Securities brokerage services;
- (m) Shared credit union branch (service center) operations;
- (n) Student loan origination;
- (o) Travel agency services;
- (p) Trust and trust-related services:
 - (1) Acting as administrator for prepaid legal service plans;
 - (2) Acting as trustee, guardian, conservator, estate administrator, or in any other fiduciary capacity; and,
 - (3) Trust services.
- (q) Real estate brokerage services;
- (r) CUSO investments in non-CUSO service providers: In connection with providing a permissible service, a CUSO may invest in a non-CUSO service provider. The amount of the CUSO's investment is limited to the amount necessary to participate in the service provider, or a greater amount if necessary to receive a reduced price for goods and services.

In general, CUSO's must not acquire control of, either directly or indirectly, another depository financial institution, nor invest in shares, stocks, or obligations of an insurance company, trade association, liquidity facility or similar organization, corporation or association.

In order for a state chartered credit union to invest in and/or loan to a CUSO that offers an unapproved activity or service, the credit unions must first receive approval of the Administrator of the ACUA. The request must include a full explanation and complete documentation of the activity or service and how that activity or service is associated with routine credit union operations. The Administrator will act on the request within 30 days after receipt.

A state chartered credit union must account for its investments in or loans to a CUSO in conformity with "generally accepted accounting principles" (GAAP).

Where a credit union is denied approval to invest or loan to a CUSO, an amount in excess of 2% of unimpaired capital and surplus, the credit union may within 30 days after receipt of the Administrator's written letter disapproving such request, appeal to the Board of the Alabama Credit Union Administration. The Board will in turn review the appeal and respond within 30 days.

Note: An investment in or loan to a CUSO by a corporate credit union is subject to NCUA's Part 704 regulation concerning CUSOs.

Section 5. Fiduciary Powers

A member of a state chartered credit union in Alabama who is a beneficiary, trustee or personal representative of another may deposit such fiduciary funds into the credit union in which he or she is a member. The beneficiary, trustee or personal representative of the estate of a deceased credit union member may deposit the funds of such estate into the credit union at which the decedent was a member.

Sections 5-17-4 (2) of the Code of Alabama gives credit unions the authority to accept deposits of fiduciary funds if a member is the beneficiary, trustee or personal representative. The credit union may also accept such funds if it is part of the estate of a deceased member.

Section 6. Reserves; surplus

Section 5-17-19 of the Code of Alabama, 1975, provides that Alabama credit unions maintain such regular reserves as are required to maintain insurance of member accounts under the provisions of Title II of the Federal Credit Union Act.

In addition, 5-17-19 (a) of the Code authorizes the Administrator of the Alabama Credit Union Administration to require additional reserves which the Administrator finds are necessary under the particular circumstances to protect the ongoing interest of the credit union, its members and the community. Examples requiring additional reserves may include, but are not limited to, increasing loan losses and investment losses, deteriorating economic conditions in general as well as specific to the credit union's sponsor organization(s) that ultimately could cause the credit union to suffer financially and erode member confidence in the credit union's ability to offer competitive products and services in the financial sector.

To ensure that the overall financial condition of the credit union system in Alabama will remain sound, every state chartered credit union must create an annual Capital Preservation Plan for each year, similar in intent to the Surplus Funds requirement for state chartered banks as specified in Section 5-5A-21, Code of Alabama, 1975. Such Capital Preservation Plan shall be submitted in writing to the ACUA Administrator no later than May 1 each year. Such plan will be in effect for that calendar year unless rejected in writing by the Administrator within sixty (60) days following its submission.

Each state chartered credit union shall make a transfer to regular reserves in accordance with such Capital Preservation Plan no later than December 31 of that year; provided that the Administrator may reduce the amount of such transfer upon good cause.

Furthermore, any natural person federally-insured state chartered credit union with a Net Worth ratio less than 7% for any quarter end will be required to submit quarterly reports to the Administrator that detail the corrective action(s) being taken that will provide for adequate protection of member deposits and result in the best interests of credit union members. The credit union must increase the dollar amount of its net worth by an amount equivalent to 1/10th percent (0.10%) of its total assets and must quarterly transfer that amount from undivided earnings to its regular reserve account until it is well capitalized.

A federally insured state chartered credit union may request a decrease in the retention percentage, if it is necessary to avoid a significant redemption in shares. The request must be written and submitted to the ACUA Administrator and the NCUA Board no later than fourteen (14) days before the quarter end. The request for a credit union to decrease its earnings retention is subject to quarterly review by ACUA

Net worth means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles. Retained earnings consist of regular reserves, undivided earnings, and net

income/loss for the period and any other appropriations designated by management or regulatory authorities. The net worth ratio is expressed as a percentage of assets for the quarter end, average quarterly balance, average monthly balance or average daily balance.

These requirements do not replace any previously established reserving requirements, which may have been imposed upon any credit under the Federal Credit Union Act's Prompt Corrective Action statute.

Section 7. Filing of Group Return Form 990 with the Internal Revenue Service

Section 5-17-24 of the Code of Alabama, 1975 states, in part: "A credit union shall be deemed an institution for savings and, together with all the accumulations therein, shall not be subject to taxation except as to real estate owned, and as to the excise tax required of other financial institutions. The shares of a credit union shall not be subject to taxation...."

The Administrator, or approved contracted designee, and subject to each state chartered credit union signifying in writing that they wish to be included in this group filing, may file a consolidated Internal Revenue Service Form 990 Group return with the Internal Revenue Service on behalf of all state chartered credit unions in Alabama under the jurisdiction of the Alabama Credit Union Administration on an annual basis.

To be included in a group return, each credit union must annually authorize the ACUA in writing to include the credit union in the group return. The credit union must declare under penalties of perjury that the authorization and the financial information submitted for the purpose of compiling the group return are true, accurate and complete and further declare that the credit union hold harmless the Alabama Credit Union Administration for filing a group return on its behalf.

Neither the Alabama Credit Union Administrator nor the State of Alabama is liable for information contained in any form submitted. Each credit union is individually responsible for the accuracy, completeness and timeliness of the information and for any potential tax liability or penalties that may accrue.

Section 8. Supervisory Committee

Section 5-17-13 of the Code of Alabama, 1975 provides the powers and duties of the Supervisory Committee. In addition to these provisions of law, the following is added to supplement and clarify Section 5-17-13.

- (A) Any outside auditor hired to perform the annual audit must provide evidence of liability insurance in an amount comparable to the industry standard or as defined by the Financial Accounting Standards Board (FASB), the American Institute of Certified Public Accountants (AICPA) or state law.
- (B) An audit by a CPA may be required when any of the following conditions exist
 1. Persistent recordkeeping problems.
 2. The supervisory committee did not perform an audit for the calendar year.
 3. Fraud, embezzlement, conflicts of interest(s), self-dealing, or insider dealing.
- (C) All state chartered credit unions (both federally insured and privately insured) with assets exceeding \$500,000,000 is required to have an opinion audit conducted by a state licensed certified public accountant.

Section 9. Branches

Alabama state chartered credit unions may establish a branch or office for the transaction of the credit union business within the State of Alabama upon prior written notification to the Administrator. Alabama state chartered credit unions may establish a branch or office for the transaction of credit union business in any state other than Alabama, in accordance with the laws of the other state and upon written notification to the Administrator.

Annually, every state chartered credit union will disclose their branch locations using their own form or NCUA's Report of Officials software and submit this report to the ACUA as often as branch locations are added but at least annually.

Section 10. Quorum; board meeting participation through use of conference telephone or similar communications equipment; compliance with sunshine law.

- (A) A majority of the Credit Union Board of the ACUA shall constitute a quorum for the transaction of any business.
- (B) Any action required or permitted to be taken by the Credit Union Board of the ACUA may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to such action.
- (C) Any meeting of the members of the Credit Union Board or the ACUA, whether formal or informal, whether or not an official vote is taken, must be open to the public, except where the character or good name of a person or a lawsuit is involved. The right to public access is extended to the entire process from public policy discussion and formulation through adoption and enforcement. The only exception would be the Chairman of the Credit Union Board of the ACUA calling the board members into executive session where the character or good name of a person or lawsuit would be discussed. No vote may take place in executive session. The open meeting must reconvene upon completion of the executive session and any matters requiring a vote now be taken.

Section 11. Credit Union Ownership of Fixed Assets

A credit union's ownership in fixed assets shall be limited to 5% of shares, deposits and retained earnings. Credit unions with assets less than \$1,000,000 or newly organized must receive the prior written approval of the Administrator before making any investment in fixed assets.

A credit union that currently has net worth of nine percent and a CAMEL rating of 1 or 2 for two consecutive examinations is exempt from the 5% limit.

Any credit union with an investment in real property that has been acquired for future expansion and held for over one year and is not being utilized by the credit union must have a Board resolution and business plans that specify the Board's intent and future utilization/plans, etc. of the property being retained.

Section 12. Other Requirements

Every state chartered credit union is responsible for identifying and complying with all other laws and regulations not under the jurisdiction of the ACUA as applicable to such credit union.

Section 13. Share Insurance

I. Prequalifications

- A. No corporation shall guarantee to a credit union payment of an individual members' account or otherwise issue or effect credit union share guaranty insurance until the Administrator approves that corporation. Before submitting an application to the Administrator for approval, the applicant credit union share guaranty corporation must first satisfy the following prerequisites:
 - 1. The applicant must be licensed and authorized to provide credit union share guaranty in its state of domicile or in the State of Alabama. In the case of a foreign corporation, the articles of incorporation, and any amendments thereto, must be filed with and approved by the State of Alabama;
 - 2. the applicant must provide evidence that it is in compliance with the laws of its state of domicile;
 - 3. the applicant has capital deposits in a principal sum of no less than \$5,000,000;
 - 4. the applicant submits an opinion audit by a certified public accountant verified by the oath of the president and secretary of the corporation, which demonstrates the corporation's compliance with generally accepted accounting principles, and provides independent evidence as to the adequacy of reserves.

II. Application

- A. No corporation shall guarantee to a credit union payment of a credit union share account of an individual member of a credit union or otherwise issue or effect credit union share guaranty insurance until the Administrator approves that corporation;
- B. All applications sent to the Administrator's office must be accompanied by a filing fee in the amount of \$5,000;
- C. Only completed applications will be given the full consideration of the Administrator. A "completed" application manifests a strict compliance with all of the aforementioned prequalifications, and is accompanied by the \$5,000 filing fee.
- D. In addition to the prequalification criteria set forth above, the Administrator may scrutinize such other applicant information, as he deems appropriate; including, but not limited to, shown expertise in insuring financial institutions;
- E. The Administrator shall approve or disapprove the application under this section by written order issued within one hundred and eighty (180) days of receipt of the application.
 - 1. The Administrator shall have the right to examine the books and records of the credit union share guaranty corporation as part of the approval process. The corporation shall be assessed the reasonable costs of such an examination. Such examination fee may include the costs of engaging professionals to satisfactorily perform and complete the examination.
 - 2. In disapproving an application, the Administrator may not act in an arbitrary or capricious manner or fail to comply with applicable laws.
 - 3. If the Administrator disapproves an application, good cause must be shown for such disapproval.

III. Powers and Duties

In carrying out its general purposes, a credit union share guaranty corporation

may:

- A. guarantee to participating credit unions the payment of any deficiency in an individual member's credit union share account(s) caused by insolvency or any other reason;
- B. issue credit share guaranty insurance policies or otherwise effect credit union share guaranty, and enter into other contracts necessary or advisable in the conduct of its business;
- C. advance funds in accordance with agreed upon lending terms and conditions to aid participating credit unions to operate and to meet liquidity needs;
- D. upon the written order of the Administrator of credit unions, and at such compensation as shall be agreed upon, the corporation may assume control of the property and business of any participating credit union and operate it at the direction of the Administrator until its financial stability has been reestablished to the satisfaction of the Administrator, or the credit union has been liquidated or merged into another credit union.
- E. assist in the merger, consolidation, or liquidation of participating credit unions;
- F. purchase or otherwise acquire, lease as lessee, invest in, hold, use, lease as lessor, encumber, sell, exchange, assign, mortgage, transfer, and disposes of property of any description or any interest therein;
- G. borrow money, and issue, sell, and pledge its notes, bonds, and other evidence or indebtedness, and secure any of its obligations by mortgage, pledge, or deed of trust of all or any of its property, and guarantee or secure obligations of participating credit unions;
- H. receive money or other property from its participating credit union, or any person(s);
- I. conduct investigations, examinations, and audits of any applicant or participating credit union in order to determine the financial and operations condition of the applicant or participating credit union;
- J. establish conditions for participation by credit unions, including the establishment or risk eligibility standards.

IV. Operation of a Credit Union Share Guaranty Corporation

- A. In order to permit the credit union share guaranty corporation to assess the financial condition and performance of a credit union, the Administrator shall provide to the corporation any and all reports of examination conducted by, and orders and notices issued by, the Administrator regarding any participating credit union under the supervision of the Administrator.
- B. Each credit union share account of an individual member of a participating credit union shall be guaranteed in amounts established from time to time by the credit union share guaranty corporation. Such primary guaranteed amount shall not be less than the amount of the credit union share account and in no event less than that provided by the NCUA.
- C. In addition to the primary guaranteed amount, the corporation may establish an excess coverage guarantee for the benefit of those participating credit unions that voluntarily elect to obtain such additional guarantee.

- D. The amount of the deposit account of each participating credit union, as required under the credit union share guaranty corporation's insurance policy, shall be carried on the books of the participating credit union as an asset.
- E. The credit union share guaranty corporation shall have a written contract with all participating credit unions further establishing the right and obligations of the parties.
- F. The credit union share guaranty corporation shall provide written notice to the Administrator of receipt of any application for participation by an Alabama state chartered credit union, and the corporation's underwriting decision, and in addition, the corporation shall also provide notice of any termination, voluntary or involuntary, as well as participation by any Alabama state chartered credit union.

V. Reporting

- A. A credit union share guaranty corporation shall file with the Administrator an annual report containing audited financial statements, prepared in accordance with generally accepted accounting principles by a certified public accountant, covering the fiscal year within one hundred days after the close of such fiscal year. The audited financial statements shall include at least a balance sheet and a statement of income and expenses for the year ended on the balance sheet date. The report and audited financial statements shall be accompanied by a report, certificate, or opinion of an independent certified public accountant or independent public accountant. Every such report shall be certified by the oath of the president and secretary of the corporation, and such verification shall state that the report is true and correct in all respects to the best of the knowledge and belief of the persons verifying.
- B. The Administrator shall have the right to examine the books and records of the credit union share guaranty corporation at his discretion. The corporation shall be assessed the reasonable costs of such an examination.
 - 1. Such examination fee may include the costs of engaging professionals to satisfactorily perform and complete the examination.
 - 2. In addition to any examination fees assessed by the Administrator, each approved credit union share guaranty corporation must proffer an annual processing fee to the Administrator in the amount of \$5,000.
- C. The credit union share guaranty corporation shall notify the Administrator of any modifications or amendments to its contract with participating credit unions, including the risk eligibility standards, with its Alabama state chartered, participating credit unions prior to the effective date of such modification or amendment.
- D. The credit union share guaranty corporation shall provide copies to the Administrator of any report of examinations conducted by the corporation of Alabama state chartered, participating credit unions.

VI. Special Provision

- A. Nothing herein contained in the regulation inhibits the Administrator from promulgating special requirements for credit unions whose shares are insured by a private credit union share guaranty insurer.

VII. Non-Federal Share Insurance Qualification Requirements for Credit Unions

Under the provisions of Section 5-17-19(d) of the Code of Alabama, 1975, as amended, the administrator of the Alabama Credit Union Administration is vested with the authority to permit insurance coverage of member accounts other than the National Credit Union Share Insurance Fund, the federal insurance program. The authority to permit alternative insurance rests solely with the administrator and will be granted only when certain minimum standards of financial safety and soundness are maintained by the credit union. These minimum standards for each area of the CAMEL evaluation are as follows:

Capital Adequacy	
Total Capital/Assets	6.25%
Net Capital/Assets	6.00%
Asset Quality (1)	
Delinquent Loans/Total Loan	1.75%
Net loan losses/Average Assets	0.75%
Management	
Adequate written policies must be in effect covering loans, investments, Bank Secrecy Act, collections, and ALM.	
Earnings (2)	
Net Income/Average Assets	1.00%
Liquidity or Asset Liability Management (3)	
Cash + short term investments/Total member savings	10.00%

ALM - refer to management section

- (1) Variances may be allowed up to 0.2% for each 1.0% capital exceeds minimum standards.
 (2) Variances may be allowed up to 0.1% for each 1.0% capital exceeds minimum standards.
 (3) Variances may be allowed when an adequate cash management policy which addresses actions to be followed in periods of very low liquidity and an approved line of credit sufficient to ensure continued operations are on hand.

Nothing in this regulation or the Code of Alabama should be construed as limiting the discretionary authority of the administrator in permitting or not permitting any credit union to elect alternative insurance.

Section 14. Confidentiality of Records & Applicability of Code of Alabama, Section 36-12-40.

Section 36-12-40 of the Code of Alabama, 1975 states in part: "Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute or regulation."

Therefore, pursuant to requests for information invoked by 36-12-40:

Under the authority vested in the Administrator of the Alabama Credit Union Administration by 5-17-40 of the Code of Alabama, 1975, which states in part: "[The] Alabama Credit Union Administration ...shall administer the laws of this state which regulate or otherwise relate to credit unions in this state; The authority of the Alabama Credit Union Administration to perform such functions shall be exclusive and all authority regarding credit unions is hereby vested in the Alabama Credit Union Administration."

Therefore, neither the Administrator, any member of the Credit Union Board of the ACUA, nor any credit union examiner or other agency employee shall disclose the condition and affairs of any credit union ascertained by an examination of such credit union.

The Administrator is charged with furnishing copies of the Report of Examination or any other information to the board of directors of the credit union which was subject to examination.

Any reports or information furnished or disclosed under this section shall remain the property of the Alabama Credit Union Administration and may not be disclosed to any person other than the officers, directors, attorneys and auditors of such credit union.

It shall also be the authority of the Administrator of the Alabama Credit Union Administration under Title 5-17-40 of the Code of Alabama, 1975 pursuant to 5-3A-11, of the Code of Alabama, 1975, which states, in part: "All reports of examination, records reflecting action of the credit union taken pursuant thereto, and records and minutes of the Credit Union Board of the ACUA relating to a credit union shall be confidential and shall not be subject to subpoena or inspection except by subpoena from a grand jury served on the Administrator."

The essential function of this section of the regulation is to declare that any and all information pertaining to credit unions, including but not limited to, reports of examination, correspondence or documents concerning the examination that are prepared by the board or credit union and any responses or comments by the credit union to the Administrator shall be confidential and shall not be subject to subpoena or inspection except by subpoena from a grand jury served on the Administrator.

And, although minutes of the Credit Union Board of the ACUA are public records, it is only those records or minutes of meetings that contain financial matters of individuals as well as information that might be incorrectly construed or improperly used to harm the credit union and thereby prejudice its members and the community it serves that are entitled to the same assumption and privilege of confidentiality afforded to banks and the State Banking Board, under sections 5-3A-3 and 5-3A-11 of the Code of Alabama, 1975.

ACUA Regulation 1705 Field of Membership Expansion

1705.1 Credit Union Membership

§ 5-17-5 of the Code of Alabama, 1975 states, "Credit union membership shall consist of the incorporators and such other persons as may be elected to membership and who subscribe to at least one share and pay the initial installment thereon and the entrance fee. Organizations, incorporated or otherwise, composed for the most part of the same general group as the credit union membership may be members."

The statute differentiates between membership, generally and membership requirements at organization, when it states, "Credit union organization shall be limited to groups..." This regulation defines what characteristics are permissible for groups to be added to a credit union's Field of Membership subsequent to organization of the credit union.

1705.2 Definitions

Unless the context indicates otherwise, the following definitions are used in this regulation.

Minimum Size Group:

- If Employee Group, 2 individuals
- If Association Group, 2 individuals
- If Employee Group is closely related to the credit union's primary field of membership, as stated in the credit union's bylaws, no minimum.

Eligible Association Group

Associations whose activities reflect common loyalties, mutual benefits, and mutual interests and employees of such association members. To be eligible, the association should hold regular membership meetings or it should sponsor other activities that provide for contact among members.

Membership is not limited to only real persons but business entities are eligible for membership, as are the employees of such business entities.

Well-Defined Area

The same county and counties contiguous to the county in which the main office or a branch office of the credit union is located.

Association - A group of persons with substantially common activities, loyalties, purposes, and mutual benefits or interests. The group must be a bona fide association, having a Board of Directors or other executive body, bylaws or a constitution, and should hold regular meetings, of its natural person membership. Organizations of association members, who qualify individually for membership, may qualify separately for membership.

Employee Group - A group sharing an employer/employee relationship with a common entity, including subsidiaries, parent, affiliates, and entities operating under the same general control or ownership group. Individuals under contract to an enterprise may be considered to be with the employee group of that entity. Organizations of employees, who individually qualify for membership, may qualify for membership as separate entities.

Field of Membership (FOM) – The group or groups of individuals and/or organizations defined by each credit union, for whom that credit union is designated to provide service according to the credit union's by-laws.

Low Income Designation – Those members who make less than 80% of the average for all wage earners as established by the Bureau of Labor Statistics or those members whose annual household income falls at or below 80% of the median household income for the nation as established by the Census Bureau or those members otherwise defined as low-income by the ACUA and NCUA.

A state chartered credit union may apply for a low income designation with ACUA and NCUA subject to the conditions outlined in NCUA's Rules & Regulations Parts 741.204 and 701.34.

Geographic Area - A discernable, clearly defined, geographic area, which is subject to specific identification or survey.

Geographic Based Group – A credit union Field of Membership group defined according to a geographic area.

Multiple Group (MG) – A credit union Field of Membership comprised of more than one group, which may include one or more geographic area based group(s).

Multiple Select Group (MSG) – A credit union Field of Membership comprised of more than one select group.

Occupational Group - A group of individuals who pursue the same specific defined occupation, but are not necessarily employed by the same employer or related employer.

Overlap - The condition where a group proposed to be added to the Field of Membership of a credit union includes persons who are also eligible for some other credit union due to membership in the group. The

term overlap includes any credit union, which has an office in the area of a proposed geographic area and any employee group with a significant business operation in such geographic area.

Overlap Protection – The giving of a credit union specific right to service members and deny that right to another credit union or credit unions seeking to include those same members within its Field of Membership.

Select Group (SG) – Any group, other than geographic based, designated for inclusion within a credit union's Field of Membership.

Single Select Group (SSG) – A credit union Field of Membership comprised of only one select group.

1705.3 **Requirements for Field of Membership Expansion**

Requests for Field of Membership Expansion will be considered only where the applicant credit union is adequately capitalized and demonstrates, through its financial condition, business plans and objectives and marketing plans an ongoing intent and ability to continuously serve the proposed Field of Membership.

1705.31 **Credit Unions Allowed FOM Flexibility at Least Equivalent to Federal Credit Unions in Alabama.**

Alabama state credit unions will be allowed to have at least as much flexibility as federal credit unions in the regulation of fields of membership.

1705.32 **Application Requirements**

A separate application must be submitted for each single prospective group for which a credit union desires to be added to its Field of Membership. Blank application forms will be provided by the ACUA. Expansion into any Field of Membership requires the specific prior approval by the Administrator.

1705.33 **Universal Requirements**

Every application for Field of Membership expansion shall include the following information:

- (A) A description of the proposed group, including the type (occupational, associational, employee, or geographic area.) Specific descriptive details required depend on the type of Field of Membership requested.
 - (1) If the proposed group is an association, it must be described using the full, correct, and legal name of the association (e.g. "The Indian Highlands Neighborhood Association", NOT "property owners living in the Indian Highlands Subdivision.")
 - (2) If the proposed group is an employee group, the description must include the name of the employer, including any limiting or inclusive language as may be necessary to differentiate the group (e.g. "Employees of Shelby Cleaners, Inc." OR "Employees of Shelby Cleaners, Inc. and their family members," OR Employees of Shelby Cleaners, Inc. who work at or are paid out of its Montevallo, Alabama office," NOT "Employees, stockholders, customers, and neighbors of Shelby Cleaners, Inc.")
 - (3) If the proposed group is an occupational group, the description must include a detailed description of the occupation, as defined by the U.S Dept of Labor as an occupation common

to the group, including any limiting or inclusive language as may be necessary to differentiate the group. Approval for an occupational Field of Membership will require that the group be limited by some means in order to show that the credit union will be able to provide service to all members of the group. (E.g. “Individuals, who work as plumbers, whether licensed or not, in Birmingham, Alabama” OR “Licensed plumbers, who are either self-employed or work for or with others in Birmingham Alabama, NOT “Computer hackers who work in Birmingham, Alabama”.)

- (4) If the proposed group is one based on a geographic area, the description must define specifically an area in terms that are commonly known, and designations that are permanent or nearly permanent. (e.g. Shelby County, OR the area bound by County Road 12, Alabama 119, County Road 22, and Alabama 25; NOT Voting District 5 of the City of Montevallo.) The description must also define some easily distinguishable and permanent relationship among the individuals in the area (e.g. persons who live, work, or attend school or church in Shelby County, NOT persons who shop, or visit tourist attractions in Shelby County.) A geographic area Field of Membership will not be granted if it would permit “cherry-picking” of individuals for membership (e.g. persons residing in Shelby County with individual annual incomes of \$25,000 or more combined family annual incomes of \$50,000 or more, or property owners in Shelby County.) A geographic area Field of Membership will not be granted if the obvious intent of the request is to include ONLY an employer or group of employers in an area where the only employer or group of employers is/are the one(s) in the geographic area requested (e.g. persons living, working, or attending school or church in the area bound by Highland Street, Bloch Street, County Road 10 and Salem Road in Montevallo, which outlines basically the University of Montevallo campus.)

(B) If the applicable group is 500 or more potential members, and would increase the applicant credit union’s FOM by 50% or more, the credit union shall provide:

- (1) Description of services to be offered,
- (2) An explanation of how the credit union intends to offer the services;
- (3) An outline of the credit union’s marketing plan and business plan that addresses strategic analysis, implementation of strategic objectives and financial impact.

1705.34 **Other Application Requirements for Geographic Area Based Field of Membership.**

Geographic areas added to the existing Field of Membership of a credit union need not be a “community” as required by the National Credit Union Administration pursuant to the provisions of the Federal Credit Union Act. The ACUA will authorize expansion of a Field of Membership to include a particular geographic area based upon the following considerations:

- (A) Whether the applicant credit union provides a rational basis for the area description and establishes appropriate reasons for specifying the geographic area to be added.
- (B) The adequacy of the description of services to be added, the adequacy of the explanation of how the credit union intends to offer the services and meet needs and conveniences of the potential members.

1705.35 **Geographic Area Based Fields of Membership approval to be probationary, and require subsequent review.**

Geographic areas shall be added on a probational basis and shall be reviewed at the request of the Administrator. Within five (5) years of approval of such geographic area field of membership, if the Administrator finds that a credit union with a geographic area based field of membership has not complied with the plans set forth as required in Section 1705.33 (b), the Administrator may suspend or remove such geographic area from the field of membership as specified in the credit union's charter.

1705.4 **No Overlap Protection for Geographic Area Based Field(s) of Membership**

Overlap protection will not be afforded any credit union to serve a geographic area. Applications for additional geographic area based Fields of Membership by other credit unions will not be denied because of overlaps between or among geographic area Fields of Membership

1705.41 **Temporary Overlap Protection among Single Select Groups**

A credit union with a select group (SG) as its Field of Membership may be granted temporary protection from overlap of its group with other credit unions by the Administrator. Whether or not, and for how long, overlap protection may be granted will be at the discretion of the Administrator.

1705.5 **Approval**

Applications for Field of Membership expansion may be denied or granted with a specific effective date. The effective date may be extended by the Administrator as he or she deems fit.

The Administrator, upon request, shall provide notice to any state chartered credit union of the approval of any geographic area field of membership or of the approval of any group that is 500 or more persons.

1705.51 **Field of Membership Expansion Approval May be Appealed**

A credit union or any other person may appeal the granting of any Field of Membership expansion by written appeal delivered to the administrator within 60 days after discovery or 90 days after issuance of an order of approval, whichever is later.

In the event of an appeal, the Administrator shall hold a hearing not later than 60 days after the filing of an appeal. The Administrator shall render a decision regarding an appeal within 10 days after the hearing.

The Administrator's decision may be appealed by written notice delivered to the Administrator within 30 days after the decision is rendered. The Credit Union Board of the Alabama Credit Union Administration shall then determine if a second hearing is appropriate within 10 days after the filing of the appeal of the Administrator's decision. If the ACUA Board so determines, a second hearing may be scheduled before that board within 30 days after filing of the second appeal. If a second hearing is not scheduled, the parties will be given the opportunity to file written documents supporting their position.

1705.6 Penalty for Violation

Upon finding violation of any of the requirements of this regulation the Administrator make revoke the expansion and the right to serve a group if said expansion might not have been so granted without violation.